IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.392 OF 2004

Pramila Anand Sing ... Petitioner

versus

The State of Maharashtra & ors. ... Respondents

...

Mr.Madhukar Dalvi with Mr. S.V. Pradhan, for the Petitioner.

Mr.D.R. More, A.P.P., for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

4th March 2005

P.C.:

. Heard Counsel for the parties. This petition takes exception to the order passed by the Principal Secretary (Appeal and Security) dated January 2004 in appeal filed by the Petitioner questioning the justness of the order passed by the Deputy Commissioner of Police, Zone-X, Mumbai, dated 2nd December 2003,

externing the Petitioner from the areas of Mumbai City, Mumbai Suburban, Thane and Raigad Districts, for a period of two years from the date when he removes himself from those areas, in exercise of powers under section 56(1)(a) and (b) of the Bombay Police Act, 1951.

2. The first contention raised before this Court is that there was only one criminal case registered against the Petitioner. Indeed, reliance is also placed on two in camera statements by the authority to justify the impugned action against the Petitioner. However, submits learned Counsel for the Petitioner, those in camera statements are stereo-type, which only shows the absurdity of the material, which was reckoned by the competent authority for considering proposed action of externment. It is next contended that, at any rate, the material which has been taken into account by the competent authority cannot be said to be sufficient to take recourse to draconian provision, such as section 56 of the Act, which restricts the locomotion of the person to enter a particular area which in turn impinges upon his

fundamental right. To support the above proposition, reliance was placed by the Petitioner on the decision in the case of Balu Shivling Dombe v. The Divisional Magistrate, Pandharpur and another, reported in A.I.R. 1969 Bombay 351, which had occasion to examine the purport of section 56(1)(a) of the Act. Reliance is also placed on the decision in the case of Bhausaheb Jagannath Chavan v. The State of Maharashtra and others, reported in 1995(2) Bom.C.R. 383, which has observed that the Act governs only special cases requiring special treatment, that is to say, cases, which cannot be dealt with under the ordinary law. Reliance is also placed on another decision of our High Court in the case of Chhotu Siddinath Kunwar v. State of Maharashtra and another, reported in 1989 Mh.L.J. 1021, which has noted the purport of section 56 of the Act, in particular in paragraph 8 thereof.

3. Having considered the rival submissions and going through the record, in my opinion, the petition is devoid of merits. The show cause notice specifically refers to criminal case

registered against the Petitioner for offence punishable under sections 452, 385, 323, 504 read with section 34, Indian Penal Code, which obviously is covered under the specified Chapters referred to in Section 56(1)(b) of the Act. The show cause notice then refers to the in camera statements, which indicates that the Petitioner, in association with his brother-in-law, against whom five criminal cases are pending, moves in the locality threatening the residents and shopkeepers, collecting extortion money and that residents are apprehensive of the Petitioner and not willing to depose against him. Specific instances are referred to by the two witnesses whose in camera statements have been recorded about the movements of the Petitioner with deadly weapon and using that deadly weapon, when required. It is on that basis the matter was considered by the appropriate authority and subjective satisfaction reached that the movements or acts of the Petitioner were causing or calculated to cause alarm, danger or harm to the person or property or that there are reasonable grounds for believing that the Petitioner was engaged in the commission of

offence punishable under the specified chapters of the Indian Penal Code and witnesses were not willing to come forward to depose against the Petitioner.

4. To overcome this position, it is argued that solitary criminal case registered against the Petitioner could not have been the basis to initiate action against the Petitioner. This submission, however, overlooks that criminal case has been registered in March 2003 against the Petitioner and, similar activities were continued by the Petitioner, in relation to which statements of witnesses have been recorded in camera, who have deposed about the instances of August 2003. It is on that basis the appropriate authority proceeded to initiate proposed action of externment against the Petitioner, as in its perception, the case was covered by the provisions of section 56(1)(a) and (b) of the Act. In other words, it is not the solitary criminal case registered against the Petitioner which is the basis to arrive at the subjective satisfaction by the competent authority. The other material which included two in camera

statements was also the basis to proceed against the Petitioner. So understood, it is not possible to hold that there was no material to take action against the Petitioner. Judicial review would be if the case was one of no material before the authority at all or that the material on record was not referrable to the proposed action. That is not the grievance in the present case.

5. The argument then proceeds that the other material relied in the shape of in camera statements of the two witnesses be discarded, being stereo type version. It is not possible for this Court, for the first time to entertain this plea or to pronounce upon the genuineness or veracity of the said statements. Nor it is open for this Court to appreciate the evidence adduced by the Petitioner so as to take a view different than the one reached by the two authorities below. If it is so, merely because there was only one criminal case registered against the Petitioner cannot be the basis to hold that provisions of section 56 of the Act could not have been invoked by the authority. To dispel

this position, Counsel for the Petitioner had vehemently pressed into service decision of our High Court in the case of Balu Dombe (supra) to the effect that the acticvity of the petitioner should be such that it causes concern for the public in general and not confined to one or two persons. The argument seems to be attractive, but it overlooks the contents of the in camera statements of the witnesses, which is the material relied upon by the authority. It refers to the movements of the Petitioner with deadly weapons in a public place and also to activities of threatening persons to part with extortion money. If this is the nature of material on record, the exposition in the case of Balu Dombe (supra), in particular para 6 of the said decision, will be of no avail to the Petitioner. Counsel had also pressed into service another decision of this Court in the case of Bhausaheb Chavan (supra). In para 6 of the said decision, it is observed that the action under the present Act can be proceeded only in special cases requiring special treatment and cannot be dealt with under the ordinary law. Indeed, the Petitioner may be justified in contending that

the criminal case registered against the Petitioner can be proceeded as per the ordinary law, but that case cannot be considered in isolation. There is other material on record, which justifies the subjective opinion reached by the authority - that having regard to the nature of movements and acts and the activities of the Petitioner, there is apprehension in the minds of general public and there is likelihood of causing alarm, danger or harm to person or property. The material also indicates that the witnesses are not willing to come forward to depose against the Petitioner and his associates.

6. To get over this position, learned Counsel for the Petitioner contends that the fact that criminal case has been registered on the next date of the incident, which had happened on the night of 5th March 2003, is indicative of the fact that there was no threat perception entertained by the persons in the locality. May be in the present case, the complainant mustered courage to file the criminal case against the Petitioner, but it is not open for this Court to ignore the two in camera statements which have

been relied upon by the authority which graphically describe the position attracting the provisions of section 56(1)(a) and (b) of the Act. Viewed in this perspective, there is no substance in this petition having regard to the limited scope of judicial review against the order of externment passed by the competent authority, which has been confirmed by the appellate authority.

7. It was lastly argued that the Petitioner has already suffered the externment period for around 15 months and in the peculiar facts of the present case, the Court may consider observing that the Petitioner need not undergo the remaining period of externment. This submission cannot be entertained because the length of externment period is a matter, which is the prerogative on subjective satisfaction of the externing authority, and it is not for the Court to sit over the judgment of the authority, which view has already been taken. This Court can only affirm the order or set aside the order as a whole, but it is not open for this Court to modify the externment period as if sitting in

appeal over the subjective satisfaction recorded by the concerned authority in that behalf.

8. In this view of the matter, the petition fails and the same is dismissed.

(A.M.KHANWILKAR,J.)